

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

KENYON et al.

Atty. Ref.: PTB-4398-207

Serial No. 10/533,940

Confirmation No.: 8049

Group Art Unit: 3771

Filed: December 29, 2006

Examiner: Rachael T. Young

For: HUMIDIFIER WITH REMOVABLE WATER TANK

* * * * *

April 6, 2011

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

**PETITION TO CORRECT INVENTORSHIP
UNDER 37 CFR §§1.47(a), 1.48(a) AND 1.48(b)**

Petition is hereby made to correct the inventors named in the above-identified application.

A. Status of the October 7, 2008 Petition

As a preliminary matter, the current petition is filed in addition to the “Petition to Correct Inventorship Under Rule 48(b)” filed on October 7, 2008, which was entered by the Patent Office according to a Patent Office communication dated March 24, 2011. The earlier Petition was filed based on a claim set that is no longer pending in this application. Therefore, Applicants respectfully request further changes to the inventorship, in effect, reinstating the inventors deleted from the October 7, 2008 Petition. Moreover, in the alternative, Applicants request the Patent Office to rescind the October 7, 2008 Petition if this is a more expedient manner for reinstating the previously removed inventors.

B. Current Petition Based on the Current Claims

The current petition includes three distinct parts: 1) a sub-petition to rejoin or reinstate several inventors that were deleted as a result of the October 7, 2008 Petition, and to add several inventors under Rule 48(a); 2) a sub-petition under Rule 48(b) to delete inventors (remaining

following entry of the October 7, 2008 Petition) whose contribution is no longer set forth in the current claims; and 3) a sub-petition under Rule 47(a) to proceed with the change of inventorship under Rule 48(a) since one of the inventors is “unavailable” to sign the fresh Rule 63 Declaration which is one of the requirements under Rule 48(a).

1. Inventors to Be Added and Reinstated

Based on the now pending claims, the subject application inadvertently omitted inventor Dan Kao, Andrew Roderick Bath and Michael Thomas Janiak and therefore Applicants request these inventors be added per 1.48(a). Residence and citizenship information for these added inventors is as follows:

Dan KAO

Northbridge, New South Wales, Australia – Citizenship: Australia

Andrew Roderick Bath

Quakers Hill, New South Wales, Australia – Citizenship: Australia

Michael Thomas Janiak

North Epping, New South Wales, Australia – Citizenship: Australia

Furthermore, original named inventors Barton John Kenyon, Arthur Kin-Wai Yee, Rohan Neil Primrose, Jim Saada, John Michael Snow, Marek Tomasz Sapula, Geoffrey Crumblin, Duncan Lovel Trevor-Wilson, Perry David Lithgow, Alexander Virr and Donald Angus Richmond are to be re-included as inventors based on the now pending claim set. The Patent Office is requested to officially rescind the October 7, 2008 Petition if this is more expeditious.

In support of the petition under 37 CFR §1.48(a) and the request to reinstate the previously deleted inventors, submitted herewith are the following documents:

- individual statements from newly added inventors Janiak, Kao and Bath (relevant for the Rule 48(a) inventors being added for the first time),
- a new Rule 1.63 Oath/Declaration, and
- Written Consent of Assignee.

In regard to the Written Consent of Assignee, the Assignment(s) of newly added inventors Janiak, Kao and Bath are being recorded in the U.S. Patent and Trademark Office records on even date herewith. Assignments for the remaining inventors were previously filed.

2. Rule 48(b) – Inventors to be deleted due to Amendment

In addition, due to amendment, Simone Marie Jeha, Andrew Charles Murray and Mark John Payne should be deleted as their invention is no longer being claimed in the nonprovisional application. See 37 CFR 1.48(b).

Following the addition of certain inventors identified in part 1., and the deletion of certain inventors identified in part 2., the full inventorship in the above-identified application will be as follows:

Barton John Kenyon
Arthur Kin-Wai Yee
Rohan Neil Primrose
Jim Saada
John Michael Snow
Marek Tomasz Sapula
Geoffrey Crumblin
Duncan Lovel Trevor-Wilson
Perry David Lithgow
Alexander Virr
Donald Angus Richmond
Michael Thomas Janiak
Dan Kao
Andrew Roderick Bath

In support of this Petition, the fee of \$130 required by Rule 17(i) is attached.

3. Rule 47(a) Petition to Proceed without the signature of Inventor Sapula

As can be seen from part 1) above, the fresh Rule 63 Declaration submitted herewith does not include the signature of one of the inventors, Mr. Marek Tomasz Sapula, who had previously executed a Declaration filed with the Patent Office on December 29, 2006. Mr. Sapula also previously executed an Assignment in relation to the above application that was filed in the USPTO on October 7, 2008 (recorded at Frame 021657 and Reel 0984).

In support of the Rule 47(a) sub-petition, the following are submitted:

- the Rule 63 Declaration executed by all joint inventors except for Mr. Sapula (attached hereto);
- proof that Mr. Sapula refuses to execute the Rule 63 Declaration or cannot otherwise be located after diligent efforts;
- the last known address of Mr. Sapula; and
- the fee set forth in 37 CFR §1.17(g).

The undersigned submits that Mr. Sapula refuses to sign or cannot be found after diligent efforts to obtain his signature. For example, a copy of the Rule 63 Declaration which was identical to the one executed by all the other inventors, as well as a copy of the pertinent U.S. application, were posted to Mr. Sapula's last known address (provided below) in relation to the above application. Specifically, the Rule 63 Declaration was sent by Express Post on December 10, 2010 and again by Registered Post on January 14, 2011, with each Post including a copy of the U.S. patent application, i.e., the U.S. National Stage of PCT International published patent application no. PCT/AU04/00810, filed on June 21, 2004, including specification (with claims) and drawings, as well as a copy of the Preliminary Amendment filed on December 9, 2010, which is referenced in the Declaration, requesting that Mr. Sapula execute the Declaration and return it to ResMed Limited. The Express Post mail was returned to ResMed Limited without being signed, with the words "Not at this address" written on the envelope. The Registered Post mail was returned unopened to ResMed Limited, with the words "Left Address" written on the envelope. Copies of the letter, receipt and Return of the Registered Post are attached.

In a further effort to make contact with Mr. Sapula, an electronic database search was performed on February 28, 2011 of the residential portion of the Australian telephone directory at the website www.whitepages.com.au (copy attached). The electronic search revealed three (3) results for the surname "Sapula" in Australia: H & H Sapula, L. Sapula and M. Sapula. Each was telephoned, but H & H Sapula and M. Sapula ("M" for "Martin") did not reveal any knowledge of Marek Sapula. However, "L. Sapula" indicated he was Marek Sapula's brother and would pass along the message to contact the Assignee (ResMed Limited), i.e., to make arrangements to review/execute the Declaration and associated papers.

Having not heard from L. Sapula or Marek Sapula, ResMed Limited made a second telephone call on March 23, 2011 to "L. Sapula". No person answered the phone, but an automatic message indicated that this was the telephone number of "Lex Sapula", whereupon another message was left requesting contact with Marek Sapula.

On March 24, 2011, ResMed received a telephone voice message from a person who identified himself as Lex Sapula, stating that he was checking on the telephone number left on his machine (on March 23), and would pass the message on to his brother Marek Sapula.

Having received no follow-up, ResMed Limited placed a third telephone call to Lex Sapula, but neither Lex Sapula nor his answering machine picked up, so it was not possible to

leave a message. To date, an executed Rule 63 Declaration has not been received from Mr. Sapula.

Mr. Sapula's last known address is as follows:

Mr. Marek Tomasz Sapula
Unit 9/29 Brickfield Street
Parramatta NSW 2150

CONCLUSION

Therefore, the granting of this Petition and the amendment of the above-identified application to reflect the above inventors are respectfully solicited.

The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Account No. 14-1140 under Order No. PTB-4398-207.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: _____

/Paul T. Bowen/

Paul T. Bowen
Reg. No. 38,009

Attachments:

Declaration of Michael Tomas Janiak
Declaration of Dan Kao
Declaration of Andrew Roderick Bath
New Rule 1.63 Oath/Declaration
Written Consent of Assignee
Returned Letter to Marek Sapula with Registered Post Receipt
Search Results from www.whitepages.com.au

PTB:jck
901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

KENYON et al.

Atty. Ref.: 4398-207

Serial No. 10/533,940

Group: 3771

Filed: December 29, 2006

Examiner: Rachel Young

For: BREATHABLE GAS APPARATUS WITH HUMIDIFIER

* * * * *

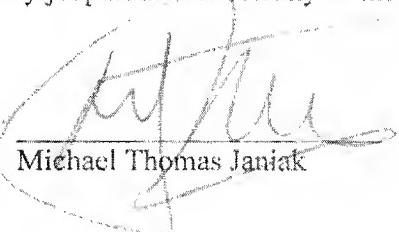
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

DECLARATION OF MICHAEL THOMAS JANIAK

1. I, Michael Thomas Janiak, am co-inventor of the above-identified application.
2. I was erroneously omitted from being listed as a co-inventor of the above-identified application.
3. The inventorship error occurred without deceptive intent on my part.
4. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

21212011
Date


Michael Thomas Janiak

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

KENYON et al.

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Examiner: Rachel Young

For: BREATHABLE GAS APPARATUS WITH HUMIDIFIER

* * * * *

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

DECLARATION OF DAN KAO

1. I, Dan Kao, am co-inventor of the above-identified application.
2. I was erroneously omitted from being listed as a co-inventor of the above-identified application.
3. The inventorship error occurred without deceptive intent on my part.
4. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

3/12/10
Date


Dan Kao

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Examiner: Rachel Young

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* * * * *

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

DECLARATION OF ANDREW RODERICK BATH

1. I, Andrew Roderick Bath, am co-inventor of the above-identified application.
2. I was erroneously omitted from being listed as a co-inventor of the above-identified application.
3. The inventorship error occurred without deceptive intent on my part.
4. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

13 Dec 2010
Date



Andrew Roderick Bath



RESMED CONFIDENTIAL

REGISTERED POST

14 January 2011

Mr Marek Sapula
Unit 9/29 Brickfield Street
PARRAMATTA NSW 2150

Dear Marek,

**Re: United States Patent Application No. 10/533,940
Title: Breathable Gas Apparatus with Humidifier
ResMed Ref: P165US1**

We have a Declaration for the above Application that requires your signature.

Please find attached a copy of the published PCT application together with a copy of the Preliminary Amendment as filed to familiarise yourself with this Application.

Please sign and date the Declaration and return to us in the attached Express Post envelope at your earliest convenience.

If you have any questions please do not hesitate to contact me on (02) 8884 1750 or Paul Green on (02) 8884 2301.

Yours sincerely

**Adrienne McGilvery
Legal/IP Administrator
ResMed Limited**

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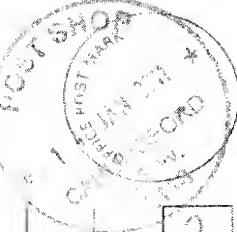
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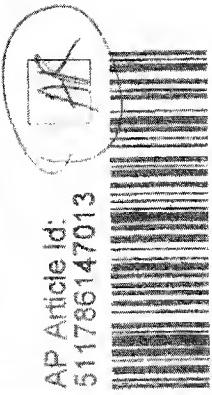
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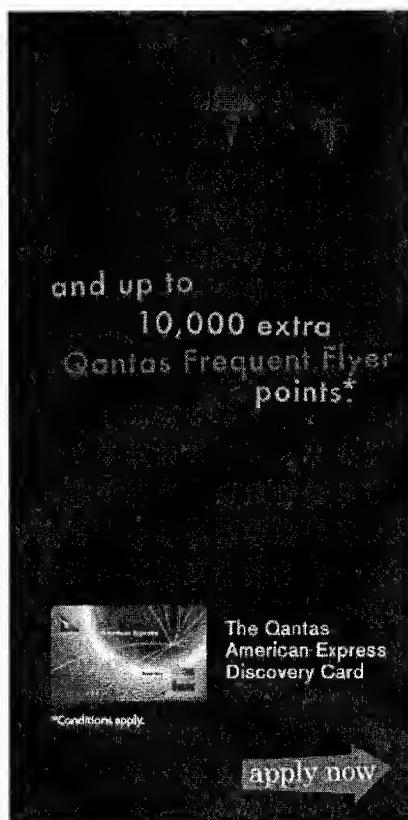
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1

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Surname Initial Location

sapula

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